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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Pharma Tech Solutions, Inc. and Decision IT Corp.,

Plaintiffs,

vs.

LifeScan, Inc.; LifeScan Scotland, Ltd.; and Johnson and Johnson,

Defendants.

**Case No.: 2-16-cv-00564-RFB-PAL**

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. As set forth in Section 13.4 below, this Protective Order does not entitle the Parties to file confidential information under seal; Local Rule 10-5 sets forth the procedures that must be followed when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as

1 well as their support staff).

2 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

4 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
7 CODE.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
9 medium or manner in which it is generated, stored, or maintained (including, among other things,  
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
11 responses to discovery in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to  
13 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
14 as a consultant in this action, (2) is not a current employee of a Party, and (3) at the time of  
15 retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

16 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
17 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
18 Party or Non-Party, even under the restricted terms and conditions applicable to material  
19 designated “CONFIDENTIAL,” would not provide adequate protection to the interests of the  
20 Designating Party.

21 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
22 extremely sensitive “Confidential Information or Items” representing computer code and  
23 associated comments and revision histories, formulas, engineering specifications, or schematics  
24 that define or otherwise describe in detail the algorithms or structure of software or hardware  
25 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
26 serious harm that could not be avoided by less restrictive means. For avoidance of doubt, this  
27 includes source files, “include” files, make files, intermediate output files, executable files, header  
28 files, resource files, library files, module definition files, map files, object files, linker files,

1 browser info files, debug files, computer code, scripts, assembly, binaries, object code, source  
 2 code listings and descriptions of source code, object code listings, and descriptions of object code,  
 3 Hardware Description Language (HDL) and Register Transfer Level (RTL) files that describe the  
 4 hardware design of any ASIC or other chip and other human-readable files used in the  
 5 compilation of source code into a software program. The Receiving Party shall not attempt to  
 6 compile the source code.

7 2.10 House Counsel: attorneys who are employees of a party to this action. House  
 8 Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal  
 10 entity not named as a Party to this action.

11 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this  
 12 action but are retained to represent or advise a party to this action and have appeared in this action  
 13 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

14 2.13 Party: any party to this action, including all of its officers, directors, employees,  
 15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 17 Material in this action.

18 2.15 Professional Vendors: persons or entities that provide litigation support services  
 19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
 20 organizing, storing, or retrieving data in any form or medium) and their employees and  
 21 subcontractors.

22 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
 23 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
 24 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

25 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
 26 Producing Party.

### 27 3. SCOPE

28 The protections conferred by this Order cover not only Protected Material (as defined

1 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
2 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,  
3 or presentations by Parties or their Counsel that might reveal Protected Material. However, the  
4 protections conferred by this Order do not cover the following information: (a) any information  
5 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
6 public domain after its disclosure to a Receiving Party as a result of publication not involving a  
7 violation of this Order, including becoming part of the public record through trial or otherwise;  
8 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the  
9 Receiving Party after the disclosure from a source who obtained the information lawfully and  
10 under no obligation of confidentiality to the Designating Party. Nothing in this Order shall restrict  
11 in any way a Producing Party's use or disclosure of its own Protected Material.

12 4. DURATION

13 Even after final disposition of this litigation, the confidentiality obligations imposed by  
14 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
15 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
16 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
17 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
18 including the time limits for filing any motions or applications for extension of time pursuant to  
19 applicable law.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
22 or Non-Party that designates information or items for protection under this Order must take care  
23 to limit any such designation to specific material that qualifies under the appropriate standards.  
24 To the extent it is practical to do so, the Designating Party must designate for protection only  
25 those parts of material, documents, items, or oral or written communications that qualify – so that  
26 other portions of the material, documents, items, or communications for which protection is not  
27 warranted are not swept unjustifiably within the ambit of this Order.

28 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order

(see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is

1 impractical to identify separately each portion of testimony that is entitled to protection and it  
2 appears that substantial portions of the testimony may qualify for protection, the Designating  
3 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
4 a right to have up to 30 days to identify the specific portions of the testimony as to which  
5 protection is sought and to specify the level of protection being asserted. Only those portions of  
6 the testimony that are appropriately designated for protection within the 30 days shall be covered  
7 by the provisions of this Protective Order. Alternatively, a Designating Party may specify, at the  
8 deposition or up to 30 days afterwards if that period is properly invoked, that the entire transcript  
9 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
10 ONLY.”

11 Counsel for the Producing Party shall have the right to exclude from oral depositions other  
12 than the deponent, the deponent’s counsel, the reporter and the videographer (if any), any person  
13 who is not authorized by this Protective Order to receive or access Protected Material based on  
14 the designation of such Protected Material. Such right of exclusion shall be applicable only  
15 during periods of examination or testimony regarding such Protected Material.

16 Transcripts containing Protected Material shall have an obvious legend on the title page  
17 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
18 pages (including line numbers as appropriate) that have been designated as Protected Material and  
19 the level of protection being asserted by the Designating Party. The Designating Party shall  
20 inform the court reporter of these requirements. Any transcript that is prepared before the  
21 expiration of a 30-day period for designation shall be treated during that period as if it had been  
22 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
23 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
24 actually designated.

25 (c) for information produced in some form other than documentary and for any other  
26 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
27 or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL

1 – SOURCE CODE.” If only a portion or portions of the information or item warrant protection,  
2 the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify  
3 the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
5 designate qualified information or items does not, standing alone, waive the Designating Party’s  
6 right to secure protection under this Order for such material. Upon timely correction of a  
7 designation, the Receiving Party must make reasonable efforts to assure that the material is  
8 treated in accordance with the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
11 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
13 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
15 original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
17 process by providing written notice of each designation it is challenging and describing the basis  
18 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
19 notice must recite that the challenge to confidentiality is being made in accordance with this  
20 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
21 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
22 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
24 designation was not proper and must give the Designating Party an opportunity to review the  
25 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
26 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
27 stage of the challenge process only if it has engaged in this meet and confer process first or  
28 establishes that the Designating Party is unwilling to participate in the meet and confer process in

1 a timely manner.

2       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
3 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
4 Civil Local Rule 7-2 (and in compliance with Civil Local Rule 10-5, if applicable) within 21 days  
5 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
6 process will not resolve their dispute, whichever is earlier. Each such motion must be  
7 accompanied by a competent declaration affirming that the movant has complied with the meet  
8 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
9 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
10 shall automatically waive the confidentiality designation for each challenged designation. In  
11 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
12 time if there is good cause for doing so, including a challenge to the designation of a deposition  
13 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
14 accompanied by a competent declaration affirming that the movant has complied with the meet  
15 and confer requirements imposed by the preceding paragraph.

16       The burden of persuasion in any such challenge proceeding shall be on the Designating  
17 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
18 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
19 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
20 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
21 material in question the level of protection to which it is entitled under the Producing Party's  
22 designation until the court rules on the challenge.

23     7.       ACCESS TO AND USE OF PROTECTED MATERIAL

24       7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
25 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
26 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
27 the categories of persons and under the conditions described in this Order. Nothing in this Order  
28 shall bar or otherwise restrict any attorney from rendering advice to his or her client with respect



1 to this litigation and, in the course thereof, referring to or relying upon his or her examination of  
2 Protected Material produced by another party or a third-party; provided, however, that in  
3 rendering such advice and in otherwise communicating with his client, the attorney shall not  
4 make specific disclosure of any item of the Protected Material. When the litigation has been  
5 terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL  
6 DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at a location and  
8 in a secure manner that ensures that access is limited to the persons authorized under this Order.

9 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
10 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
11 information or item designated "CONFIDENTIAL" only to:

12 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
14 information for this litigation;

15 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
16 Party to whom disclosure is reasonably necessary for this litigation;

17 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
18 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
19 Agreement to Be Bound" (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff, professional jury or trial consultants, and  
22 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

23 (f) any deposition witness who is an employee of the Producing Party (or the  
24 Designating Party, if different);

25 (g) the author or recipient of a document containing the information or a custodian or  
26 other person who otherwise possessed or knew the information.

27 (h) any mediator who is assigned to hear this matter, and his or her staff.

28 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and

1 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
7 information for this litigation;

8 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in  
9 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,  
10 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to  
11 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;<sup>1</sup>

12 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for  
13 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
14 A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been  
15 followed;

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, and  
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

19 (f) the author or recipient of a document containing the information or a custodian or  
20 other person who otherwise possessed or knew the information, or any deposition witness who is  
21 an employee of the Producing Party (or the Designating Party, if different); and

22 (g) any mediator who is assigned to hear this matter, and his or her staff.  
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27 <sup>1</sup> This Order contemplates that Designated House Counsel shall not have access to any information or items  
28 designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1           7.4     Procedures for Approving or Objecting to Disclosure of “HIGHLY  
2     CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
3     CODE” Information or Items to Designated House Counsel or Experts.

4           (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
5     Party, a Party that seeks to disclose to Designated House Counsel any information or item that has  
6     been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
7     paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the  
8     full name of the Designated House Counsel and the city and state of his or her residence and (2)  
9     describes the Designated House Counsel’s current and reasonably foreseeable future primary job  
10    duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
11    become involved, in any competitive decision-making.

12           (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
13    Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
14    that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
15    “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a  
16    written request to the Designating Party that (1) sets forth the full name of the Expert and the city  
17    and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3)  
18    identifies the Expert’s current employer(s), (4) identifies each person or entity from whom the  
19    Expert has received compensation or funding for work in his or her areas of expertise or to whom  
20    the expert has provided professional services, including in connection with a litigation, at any  
21    time during the preceding five years,<sup>2</sup> and (5) identifies (by name and number of the case, filing  
22    date, and location of court) any litigation in connection with which the Expert has offered expert  
23    testimony, including through a declaration, report, or testimony at a deposition or trial, during the  
24    preceding five years.

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27    <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
28    Expert should provide whatever information the Expert believes can be disclosed without violating any  
  confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with  
  the Designating Party regarding any such engagement.

1 (b) A Party that makes a request and provides the information specified in the  
2 preceding respective paragraphs may disclose the subject Protected Material to the identified  
3 Designated House Counsel or Expert unless, within 3 days of delivering the request, the Party  
4 receives a written objection from the Designating Party. Any such objection must set forth in  
5 detail the grounds on which it is based.

6 (c) A Party that receives a timely written objection must meet and confer with the  
7 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
8 agreement within seven days of the written objection. If no agreement is reached, the Party  
9 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as  
10 provided in Civil Local Rule 7-2 (and in compliance with Civil Local Rule 10-5, if applicable)  
11 seeking permission from the court to do so. Any such motion must describe the circumstances  
12 with specificity, set forth in detail the reasons why disclosure to Designated House Counsel or the  
13 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
14 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
15 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
16 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
17 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
18 disclosure.

19 In any such proceeding, the Party opposing disclosure to Designated House Counsel or  
20 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
21 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
22 Material to its Designated House Counsel or Expert.

23 8. SOURCE CODE

24 (a) To the extent production of source code becomes necessary in this case, a  
25 Producing Party may designate source code as "HIGHLY CONFIDENTIAL – SOURCE CODE"  
26 if it comprises or includes confidential, proprietary or trade secret source code.

27 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE  
28 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" information, including the Prosecution Bar set forth in Paragraph  
2 8, and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL –  
3 ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Paragraphs 7.3 and  
4 7.4, with the exception of Designated House Counsel.

5 (c) Any source code produced in discovery may, at the election of the Producing  
6 Party, be produced (1) in native form on electronic media (such as a DVD-ROM, CD-ROM or  
7 hard drive) or (2) shall be made available for inspection, in a format allowing it to be reasonably  
8 reviewed and searched, during normal business hours or at other mutually agreeable times, at an  
9 office of the Producing Party's counsel or another mutually agreed upon location, or, in the case  
10 of third party source code, at a location designated by the third party. If the latter option is  
11 selected, the source code shall be made available for inspection on a secured computer in a  
12 secured room without Internet access or network access to other computers, and the Receiving  
13 Party shall not copy, remove, or otherwise transfer any portion of the source code onto any  
14 recordable media or recordable device, although a source code reviewer to use a laptop to take  
15 notes manually. A laptop shall not be used to electronically transfer any data from the Source  
16 Code Computer to the laptop. The Producing Party may visually monitor the activities of the  
17 Receiving Party's representatives during any source code review from outside the source code  
18 review room, but only to ensure that there is no unauthorized recording, copying, or transmission  
19 of the source code, so long as the Producing Party cannot hear the Receiving Party or see the  
20 contents of the Receiving Party's notes or the display of the Source Code Computer. The  
21 Producing Party shall not listen to any activity (*e.g.*, oral communication) taking place inside the  
22 source code viewing room and no video may be made of any activity taking place in the source  
23 code viewing room. The Receiving Party may request that commercially available software tools  
24 for reviewing and searching source code be installed on the Source Code Computer, provided,  
25 however, that (a) the Receiving Party possesses any appropriate license to such software tools;  
26 (b) the Producing Party approves such software tools (such approval shall not be unreasonably  
27 withheld); and (c) the Receiving Party provides the Producing Party with written justification as  
28 to why such other software tools are reasonably necessary for the Receiving Party to perform its

1 review of the source code consistent with all of the protections herein. To the extent only the  
2 Receiving Party possesses the software tools, the Receiving Party must provide the Producing  
3 Party with the licensed software tool(s) at least four (4) business days in advance of the date  
4 upon which the Receiving Party wishes to have the additional software tools available for use on  
5 the Source Code Computer if the Producing Party does not object to such installation. If the  
6 Producing Party objects, the parties shall meet and confer in an attempt to resolve their  
7 differences. If, after meeting and conferring, the Producing Party and Receiving Party cannot  
8 resolve the objection, the Producing Party shall be considered as the Challenging Party and may  
9 seek court resolution. For emphasis, it should be noted that the tools for reviewing source code  
10 may not be used to circumvent the protections of this Protective Order in any way. The electronic  
11 source code shall be produced in a manner that preserves filenames and directory structures. The  
12 Receiving Party's outside counsel and/or experts shall be entitled to take notes relating to the  
13 source code, including on a laptop computer, but may not copy the source code into the notes. No  
14 copies of all or any portion of the source code may leave the room in which the source code is  
15 inspected except as otherwise provided in this Protective Order. Further, no other written or  
16 electronic record of the source code is permitted except as otherwise provided in this Protective  
17 Order.

18 (d) During inspection of the source code, the Receiving Party's designated outside  
19 counsel or experts/consultants in the private room may compile a list of such source code files (or  
20 portions thereof) to be copied. The Receiving Party may request paper copies of limited portions  
21 of source code that are reasonably necessary for the preparation of court filings, pleadings, expert  
22 reports, or other papers, or for deposition or trial, but shall not request paper copies for the  
23 purpose of reviewing the source code other than electronically as set forth in paragraph (c) in the  
24 first instance. Within two (2) business days of receiving identification of such source code by the  
25 Receiving Party, the Producing Party shall provide all such source code in paper form to the  
26 Receiving Party via overnight delivery or by an agreed secure electronic transfer, including bates  
27 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." If source code is  
28 produced by secure electronic transfer, the Receiving Party may make one hard copy of the

1 source code. The Producing Party may challenge the amount of source code requested in hard  
2 copy form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6  
3 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the  
4 “Designating Party” for purposes of dispute resolution.

5 (e) The Receiving Party shall maintain a record of any individual who has inspected  
6 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
7 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
8 Party shall not create any electronic or other images of the paper copies and shall not convert any  
9 of the information contained in the paper copies into any electronic format, except small excerpts  
10 thereof reasonably necessary for court filings, expert reports, discovery responses and other  
11 similar documents. All such documents shall be clearly marked “HIGHLY CONFIDENTIAL –  
12 SOURCE CODE” and, if filed, shall be filed under seal. The Receiving Party shall only make  
13 additional paper copies if such additional copies are (1) necessary to prepare court filings,  
14 pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for  
15 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used  
16 during a deposition shall be retrieved by the Producing Party at the end of each day and must not  
17 be given to or left with a court reporter or any other unauthorized individual.

18 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
19 LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation that compels  
21 disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
23 – SOURCE CODE,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification shall include a  
25 copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
27 the other litigation that some or all of the material covered by the subpoena or order is subject to  
28 this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;



2. promptly provide the Non-Party with a copy of the Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.

#### 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

Inadvertent or unintentional production of "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" documents or information that are not so designated shall not be deemed a waiver in whole or in part of a claim for treatment as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE." If, through inadvertence, a Producing Party provides any information pursuant to this litigation without marking the information as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" the

Producing Party may subsequently inform the Receiving Party of the specific designation of the disclosed information, and the Receiving Party shall treat the disclosed information as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information upon receipt of written notice from the Producing Party. To the extent the Receiving Party has already disclosed such information, the Receiving Party shall use its best efforts to promptly collect any copies of disclosed material that have been provided to individuals other than those authorized under this Protective Order, and if collected, shall destroy or return them to the Producing Party. Such return or confirmation of destruction shall not preclude the Receiving Party from seeking to compel production of the materials and shall not constitute an admission by the Receiving Party that the materials were, in fact, privileged or otherwise protected in any way. The Producing Party shall retain the Privileged Material for submission to the Court in the event the Receiving Party moves to compel.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

13.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

13.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 10-5.

14. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of the Protected  
 2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
 3 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
 4 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
 5 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
 6 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
 7 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
 8 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
 9 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
 10 product, and consultant and expert work product, even if such materials contain Protected  
 11 Material. Outside counsel need not purge its document management system or backup tapes to  
 12 eliminate Protected Matters. Any such archival copies that contain or constitute Protected  
 13 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14  
 15 Dated: June 17, 2016

16 SNELL & WILMER L.L.P.

FOX ROTHCHILD L.L.P.

17 By: /s/ Chad R. Fears  
 18 Chad R. Fears, Esq.  
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 19 3883 Howard Hughes Parkway, Suite 1100  
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 1980 Festival Plaza Drive, Suite 700  
 Las Vegas, NV 89135

20 *Attorneys for Defendants*

*Attorneys for Plaintiff*

21  
 22  
 23 IT IS SO ORDERED.

24 \_\_\_\_\_  
 25 Honorable  
 UNITED STATES DISTRICT JUDGE

26  
 27 Dated: \_\_\_\_\_  
 28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address],  
declare under penalty of perjury that I have read in its entirety and understand the Protective  
Order that was issued by the United States District Court for the District of Nevada on  
\_\_\_\_\_ [date] in the case of \_\_\_\_\_, Case No.  
\_\_\_\_\_. I agree to comply with and to be bound by all the terms of this  
Protective Order, and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such  
enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my Nevada agent for service of process in connection with this action or any  
proceedings related to enforcement of this Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]